

## TASK FORCE ON THE DELIVERY OF LEGAL SERVICES

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### DRAFT MINUTES

Monday, January 7, 2019

Room 119 A/B, Arizona State Courts Building

1501 W. Washington Street

Phoenix, Arizona 85007

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**Present:** Justice Ann Timmer, Chair; Victoria Ames; Robyn Austen; Betsey Bayless; Justice Rebecca Berch (ret.); Don Bivens; Stacy Butler; Dave Byers; Diane Culin; Whitney Cunningham; Judge Maria Elena Cruz; Paul Friedman; Tami Johnson; Judge Joseph Kreamer; John Phelps, Judge Peter Swann; Billie Tarascio; Guy Testini; Mark Wilson

**Absent:** Peter Akmajian; Jeff Fine

**AOC Staff:** Jennifer Albright; Theresa Barrett; Sabrina Nash; Kathy Sekardi

**Guest Presenters:** Chief Justice Scott Bales; Professor William Henderson; Mr. Will Morrison

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### I. REGULAR BUSINESS

The first meeting of the Task Force on the Delivery of Legal Services was called to order at 9:01 a.m. Justice Timmer, Chair, welcomed the membership, guest speakers and others in the room. After reviewing AO 2018-111 and the charge of the task force, members introduced themselves.

Staff to the task force, Jennifer Albright, reviewed the business rules and proxy form with the membership. Members were shown where on the task force webpage the documents were available.

### II. PRESENTATIONS

#### Professor William Henderson

William D. Henderson, Professor & Stephen F. Burns Chair on the Legal Profession, Indiana University Maurer School of Law, presented on the legal market landscape. Professor Henderson conducted a study of the legal market for California and the report from his study was available through the meeting materials.

Professor Henderson stated that the legal profession is facing a challenge due to the cost of traditional legal services going up, access to legal services is going down, law firms are not growing, and attorneys who serve ordinary people, not large business or corporate interests, are struggling to earn a living. Professor Henderson shared that he divided the legal profession into two groups, one serving individuals (called PeopleLaw) and one serving large businesses (Organizational Clients). The PeopleLaw sector has been declining since the 1970s and the number of self-represented persons has been climbing. At the same time corporate clients have

increasingly in-sourced legal services or turned to non-traditional law firms, thus negatively impacting the growth of traditional law firms.

Professor Henderson concluded that the legal profession suffers from lagging legal productivity. For legal productivity to rise, lawyers need to be able to partner with professional of other disciplines. Professor Henderson posited that changes to legal ethics rules that currently prohibit non-lawyer investment and non-lawyers partnering with lawyers would lower the cost of legal services and increase legal productivity. Professor Henderson answered questions from the task force membership throughout his presentation.

#### Will Morrison

Will Morrison, the Strategic Policy Counsel of the Law Society of Ontario gave a presentation on Ontario's licensed paralegal program. Mr. Morrison related that prior to licensing Ontario allowed limited ability of "agents" to appear in court, but there was no regulation of those persons. It was determined that regulation would be a benefit to the public and the legal profession and Ontario began licensing paralegals in 2007. Ontario structured its paralegal licensing program in the same fashion as its attorney regulation program. The Law Society of Ontario licenses both attorneys and paralegals.

Mr. Morrison discussed the education, experience, continuing education, ethics, trust account, insurance, and other licensing requirements for paralegals. He also discussed the testing, background check, and disciplinary process Ontario has put in place.

Mr. Morrison shared information on the roll-out of the licensing program, including grandfathering of persons meeting educational and experience requirements. He also discussed the scope of practice allowed by paralegals and answered questions from the task force membership throughout his presentation

#### Chief Justice Bales

After the presentations, Chief Justice Scott Bales took a few minutes to welcome the task force membership and thank them for their service. He discussed the role of the task force considering the Supreme Court's current strategic agenda.

#### Mark Wilson

The last presentation of the morning was given over lunch by Mark Wilson, Director, Certification and Licensing Division of the Arizona Administrative Office of Courts (AOC), on the certified legal document preparer program (LDP). Mr. Wilson is also a member of the task force.

Mr. Wilson discussed the requirements for becoming a certified legal document preparer including education requirements, experience requirements, testing, background checks, scope of practice, and complaint and disciplinary process

### **III. WORK GROUP BUSINESS**

#### Formation

Justice Timmer explained that the task force has been divided into two work groups. Work group leads were Don Bivens and Judge Maria Elena Cruz. The Bivens led workgroup would focus on the first 3 charges of AO 2018-111 and the work group led by Judge Cruz would focus on the last 3 charges.

Work groups then broke out to discuss their charges, generate ideas, and discuss a path forward. Members reconvened after meeting for about 90 minutes to report back to the task force.

#### Report Out

Judge Cruz reported the work group discussed the topic of unbundling of legal services and determined that based on national information, initial focus would be on the concepts of ghostwriting and notices of limited appearance and withdrawal. Nationally, these two topics are where the bulk of work has been done to improve the provision of unbundled services. Judge Cruz then reported that the work group determined that the topic of alternative business structures was likely to be where the most time was spent researching and discussing ideas. She noted that Arizona could look to Washington D.C., England and Australia to see what they had done and noted that California recently convened a committee to look at the topic as well.

Don Bivens reported that the work group heard from John Rogers, of the Supreme Court Staff Attorneys office. John shared a draft re-styled Rule 31 of the Arizona Rules of Supreme Court. John explained the draft and new organization, noted areas where the task force would need to make further decisions and answered questions. The work group also heard from Judge Gass, Superior Court of Maricopa County, about a petition to amend Rule 31(d) he had filed the previous year. Mr. Bivens reported that the work group determined that it would wait to further work on re-styling of Rule 31 until it was known if other work of the task force would necessitate rule changes.

Mr. Bivens then shared that the work group began to discuss its thoughts on the LDP program and the possibility of a new tier of limited licensed legal practitioner. He shared that there was a variety of input from members, both for and against a new tier of legal services providers. Discussion on the topic would continue at future meetings.

### **III. OTHER BUSINESS**

#### Call to the Public

The meeting concluded with a call to the public. Several members of the public were present, but no request to speak was submitted for this meeting.

#### Next Meeting:

Wednesday, February 13, 2019, at 9:00 a.m. in Room 101.

#### Adjournment:

The meeting adjourned at 3:00 p.m.



## TASK FORCE ON THE DELIVERY OF LEGAL SERVICES

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### DRAFT MINUTES

Wednesday, February 13, 2019

Room 101, Arizona State Courts Building

1501 W. Washington Street

Phoenix, Arizona 85007

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**Present:** Justice Ann Timmer, Chair; Victoria Ames; Robyn Austen; Betsey Bayless; Justice Rebecca Berch (ret.); Stacy Butler; Dave Byers; Diane Culin (telephonic); Whitney Cunningham; Judge Maria Elena Cruz; Jeff Fine; Paul Friedman; Tami Johnson; Judge Joseph Kreamer; John Phelps (telephonic); Judge Peter Swann; Billie Tarascio; Guy Testini; Mark Wilson

**Absent:** Don Bivens, Peter Akmajian

**AOC Staff:** Jennifer Albright; Theresa Barrett; Sabrina Nash

**Guest Presenters:** Paula Littlewood, Executive Director, Washington State Bar Association; Steve Crossland, Chair, Washington Supreme Court LLLT Board; Steven Johnson, Attorney, Member of Utah Licensed Paralegal Practitioner Program

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### I. REGULAR BUSINESS

The second meeting of the Task Force on the Delivery of Legal Services was called to order at 9:03 a.m. Justice Timmer, Chair, welcomed the membership, and others in the room. As this was only the second meeting of the membership, members briefly introduced themselves.

The meeting minutes from January 7, 2019, were provided to members in advance. Justice Timmer asked if there were any edits, additions, or other concerns. Having heard none, Dave Byers moved to approve the minutes. Judge Joseph Kreamer seconded the motion. The minutes were approved unanimously.

### II. PRESENTATIONS

Presenters appeared telephonically with the aid of WebEx.

#### Washington State LLLT Program

The first presentation to the task force was by Paula Littlewood, Executive Director of the Washington State Bar Association and Steve Crossland Chair of Washington's LLLT (Limited License Legal Technician) program. Ms. Littlewood and Mr. Crossland gave an overview of the need for legal services in Washington that led to the committee that ultimately recommended the LLLT program, the work involved in getting the program approved, and the scope of legal

services LLLTs can provide. They also spoke about lessons learned from the inception of the program to present time and spoke of efforts to expand the scope of legal services to family law and to allow LLLTs to appear in court in limited capacities on each area of they are licensed to provide legal services.

Members of the task force asked question throughout the presentation. Questions included whether LLLTs can partner with lawyers as a single business entity (answer was yes, ethical rules were amended to allow, they also can practice individually); average hourly rate of a LLLT compared to an attorney's hourly rate (LLLTs charge 25-33% of what an attorney charges), and cost of becoming licensed (University of Washington has reduced credit hour rate from \$600 to \$200 for LLLT, estimate is \$15,000 for cost of Associate degree plus the mandatory additional legal courses and license application).

#### Steven Johnson

The next presentation was by Steven Johnson, attorney, and member of Utah's Limited License Practitioner Committee. Mr. Johnson spoke generally about Utah's efforts to provide a non-lawyer tier of legal service providers. He shared that unlike Washington's LLLT program, Utah's LPPP program would limit the legal service LPPPs could provide to completions of forms and legal advice related to completion of forms. He related that to begin LPPPs are not authorized to appear in court. Utah has just gained approval of the LPPP program and therefore is still in the process of developing curriculum, exams, changes to ethical rules, and other infrastructure needed to license its first practitioners. Mr. Johnson noted that Utah expected to potentially have 100 licensed LPPPs in the first year due to a process developed to grandfather persons who meet all of the requirements except the passing of examinations.

Members asked questions throughout the presentation which included what practice areas LPPPs would be allowed to provide services in (landlord/tenant, collections, family law); who will be regulatory authority (State Bar); who may LPPPs represent (individuals, not organizations).

### **III. WORK GROUP BUSINESS**

#### Work Group Breakouts

The task force then broke for lunch and to breakout out into the two previously formed work groups. Members of the public were able to attend these breakout sessions.

#### Report Out

The full task force reconvened at 1:15 p.m. to hear from the work groups. Judge Cruz, as lead of the work group charged with exploring possible recommendations related to the two charges (items d. and e. in AO 2018-111) assigned to the work group, reported first. Judge Cruz explained that the group continued to focus on the charge related to ethical rules 5.4 and 1.2 and the possibility of allowing non-lawyers and lawyer to be partners in a legal services entity, commonly known as alternative business structures. Judge Cruz shared that the work group had invited and heard from Hope Todd of the Washington D.C. Bar Association about the D.C.

ethical rule 5.4 that allows limited alternative business structures. The work group exploring specific topics in order to determine if Arizona ethical rule 5.4 should be amended to allow for alternative business structures. The work group brainstormed ideas related to the following: scope of services provided by such an entity, organizational structure and potential limits on percentage of ownership by non-lawyers, and requirements around disclosure of being an alternative business structure. Topics involving conflicts of interest between legal partners and non-lawyer partners, what is known as the multi-discipline practice issue, and passive investment were also discussed. Judge Cruz noted the group decided those needed greater investigation.

Stacy Butler reported out for the work group charged with exploring the three charges (items a. through c. in AO 2018-111) assigned to the group. Ms. Butler reported the work group is first focusing on the topic of whether Arizona should develop a limited licensed non-lawyer legal services provider program. Having heard from Ontario, Canada, and Washington and Utah about their programs, the work group members had consensus that such a program should be pursued and had reached consensus to develop a recommendation that was more similar to Ontario, Canadas model. The task force was able to provide feedback as to the work groups chosen direction. There was consensus the workgroup should continue its work.

Ms. Butler also explained the work group spent the breakout session focused on small claims and general civil claims in limited jurisdiction courts. Marretta Mathes, staff to the Small Claims Case Improvements Committee, gave a presentation on efforts to improve caseflow of small claims cases to allow the work group to have knowledge of efforts to explore of improvements to processing of small claims matters. The work group started by focusing on small claims cases. It was agreed that since small claims cases by law do not allow parties to be represented (except if other parties agree to be represented) and although Arizona certified Legal Document Preparers can assist self-represented persons in preparing documents for small claims matters, they generally are not utilized for those case types, ultimately the discussion of the work group focused on civil matters in limited jurisdiction courts generally.

The work group engaged in a great deal of discussion on the merits of a limited license non-lawyer practitioner program. Members of the public who were present provided answer to several questions the work group had as to scope of practice by attorneys and typical issues and case types in limited jurisdiction courts, specifically justice of the peace courts. Ms. Butler shared information about the work group determining to continue the discussion on this topic and sought input and feedback from the whole of the task force membership. Discussion among the members included the topic of whether the Legal Document preparer Program should be eliminated. Consensus form the task force was that the Legal Document Preparer Program should not be eliminated and instead exploration should occur into modifying or expanding that program once the work group is ready to move on to that charge. As discussion ensued on continuation of exploring the creation of a new tier of limited licensed legal practitioner, the task force members ultimately began discussing whether a more focused subject matter area might be a better place to start developing recommendations. After discussion, it was agreed the work group would focus on family law matters first and return to civil cases later.

### **III. OTHER BUSINESS**

#### Call to the Public

The meeting concluded with a call to the public. A number of public members representing legal document preparers and attorneys practicing in landlord/tenant law, debt collections, and limited jurisdiction civil matters provided statements to the task force. Task force members asked questions of these public members as well.

#### Next Meeting:

Thursday, March 14, 2019, at 9:00 a.m. in Room 345 A/B.

#### Adjournment:

The meeting adjourned at 3:04 p.m.



## TASK FORCE ON THE DELIVERY OF LEGAL SERVICES

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### DRAFT MINUTES

Thursday, March 14, 2019

Room 345 A/B, Arizona State Courts Building

1501 W. Washington Street

Phoenix, Arizona 85007

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**Present:** Justice Ann Timmer, Chair; Peter Akmajian (telephonic); Victoria Ames; Robyn Austin; Betsey Bayless; Justice Rebecca Berch (ret.); Stacy Butler; Dave Byers; Diane Culin (telephonic); Whitney Cunningham; Judge Maria Elena Cruz; Jeff Fine; Paul Friedman; Tami Johnson; Judge Joseph Kreamer; John Phelps, Judge Peter Swann; Billie Tarascio (telephonic); Guy Testini; Mark Wilson

**Absent:** Don Bivens; Judge Joseph Kreamer; Justice Rebecca Berch (ret.)

**AOC Staff:** Jennifer Albright; Kathy Sekardi

**Guests:** Mark Lassiter, Attorney at Law; Patricia Sallen, Attorney at Law

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### I. REGULAR BUSINESS

The third meeting of the Task Force on the Delivery of Legal Services was called to order at 9:07 a.m. Justice Timmer, Chair, welcomed the membership, and others in the room.

The meeting minutes from February 13, 2019, were provided to members in advance. Justice Timmer asked if there were any edits, additions, or other concerns. Having heard none, Mr. Byers moved to approve the minutes. Mr. Fine seconded the motion. The minutes were approved unanimously.

### II. PRESENTATIONS

#### Mark Lassiter, Attorney at Law

Mr. Lassiter gave a presentation to the task force on legal services delivery models and how legal organizations are changing. The presentation was titled *The End of Law Firms?: Rethinking Legal Services Delivery in the 21st Century*. The presentation centered on the following:

- An overview of the main forces changing on the delivery of legal services, including a historical look at where legal jobs were and where they are today and what types of matters are brought to lawyers today versus the types of legal matters attorneys took in the past;
- The impact of evolving legal regulations and the need for innovations toward affordable legal services; alternative business structures particularly as that concept is defined as a charge to the task force;

- A proposal for how Arizona might test a change in ethical rules to allow for alternative business structures where lawyers could partner with non-lawyers.

Members asked questions throughout the presentation which were answered by Mr. Lassiter.

### **III. WORK GROUP BUSINESS**

#### Work Group Breakouts

The task force then moved into team breakout sessions. Members of the public were able to attend these breakout sessions. Mr. Lassiter was asked to join the team that was working on the topic of alternative business structures.

The team led by Don Bivens and Stacy Butler had invited several legal practitioners to speak about the subject matter areas of landlord/tenant law and debt collection to share information about those practice areas and answer questions for members, as the team was working on the task force's charge to look at the possibility of Arizona creating a limited license non-lawyer tier of legal service providers. Several members of the public who were identified as current certified Legal Document Preparers also participated in that breakout session.

#### Report Out

The full task force reconvened at 1:40 p.m. to hear from the work groups.

First, Ms. Butler discussed the Bivens/Butler Workgroup breakout session. The workgroup was able to obtain and look at some high-level data on case types in limited jurisdiction cases. That data was shared with the task force.

Once again, the work group engaged in a great deal of discussion on the merits of a limited license non-lawyer practitioner program. Members of the legal community and public attended the breakout session, several of whom were invited to discuss the specific topics of landlord/tenant and debt collection practice. Ms. Butler shared that it was clear that these are very "one-sided" matters as far as who could afford representation. As such the group did inquire on where gaps were for those that are unrepresented, as the goal of a new tier legal service provider would be to allow more people to obtain some type of legal assistance should they choose to.

Ms. Butler shared the work groups process of hearing from a limited jurisdiction court judge, an attorney with community legal services, and an attorney who represents property owners/landlords as to the process of landlord/tenant cases, timelines, gaps in services for tenants and landlords, and where a limited legal service provider might close those gaps. Ms. Butler shared that it was learned from the process that these case types move quickly and that in non-payment of rent cases, there were few defenses. When slowed down, that often leads to increased monetary judgments against tenants. Although it was noted that there was a lukewarm response to non-lawyer legal service providers practicing in these areas, the legal professionals who spoke with the team agreed that a limited legal service provider could help in several ways, including:

- Agencies like Community Legal Services might be able to use this new tier of legal professional to handle cases it otherwise turns away;
- Landlords that often do not hire attorneys because they own one or just a few properties may use non-lawyer legal service providers if hiring those persons was more cost effective than hiring a lawyer

- All parties would benefit from the new legal service providers if they assisted in explaining and advising on processes, defenses or lack thereof, negotiation in non-payment of rent cases (minimizes further debt or harm to tenant and reduces landlord's attorney's costs)

Ms. Butler went on to share the workgroups process of hearing from a limited jurisdiction court judge and attorneys who represent creditors in debt collection matters as to the process of such cases, timelines, regulatory restrictions on the practice, and where a limited legal service provider might assist persons who otherwise are not represented. Ms. Butler shared that it was learned from the process that these case types are governed heavily by the Federal Consumer Protection Act. Concern was shared by the guest attorneys about education of a non-lawyer legal services provider as to those regulations as those regulations create strict liability for attorneys. The participants in the discussions agreed a non-lawyer legal service provider may be most beneficial to litigants in the form of aiding with negotiating settlement of cases.

Members asked questions and discussed points of view on the need for a new tier provider in these areas. Concerns were shared as to whether these case types alone would provide enough work to anyone pursuing a job as a limited legal service provider.

Justice Timmer inquired if there was some relationship between Legal Document Preparers (LDPs) and non-lawyer legal service providers. It was discussed that LDPs who may want to do more or specialize, may find opportunities to get the education and training to become providers under the new tier. This led to some discussion on the educational requirements the work group had begun to consider for the non-lawyer legal service providers, which involved looking at programs like the University of Arizona B.A. in Law.

John Phelps then reported out on the work of the Cruz Workgroup. Mr. Phelps indicated that the group had been looking at ER 5.4 (Rules of Conduct for Attorneys) and changes to that rule to allow alternative business structures. The group had been trying to imagine what kinds of alternative structures may be wanted or desired by lawyers in the future; however, after hearing Mr. Lassiter's presentation the group put that approach on hold and looked at Mr. Lassiter's approach of having a program where businesses would apply to the Supreme Court and seek an exception to ER 5.4 to allow lawyers and non-lawyers to partner.

Mr. Phelps shared that the group discussed specific concerns that have been shared by members of the Arizona State Bar with various members of the workgroup and noted that input from the Bar would continue to be sought.

Mr. Phelps shared that the group would continue to pursue the original path of identifying areas of the ethical rules that might be changed to allow for lawyers and non-lawyers to partner together in light of the uniqueness of the "Lassiter" approach.

Judge Cruz added that the draft proposal of Mr. Lassiter, which was projected by staff onto the screen in the room, was the basis of their work, but the workgroup through their discussions began to add to, change, and otherwise modify the proposal based on discussions of the group. Judge Cruz went through that draft document. Members of the task force then provided feedback, asked questions, and in-depth discussion was had on the topic.

A member noted that the American Bar Association (ABA) uses a system similar to the proposal. A council is used to vet proposals by law schools when a law school seeks an exception to the very structured requirements for being ABA approved. He noted this works well in that arena because it allows for a new approach to providing legal education to be tested to see if

effects, both on students and on the quality of legal education. He noted that may be a benefit to this proposal for the case-by-case application approach for an exception to ER 5.4.

A notable concern that was shared by a member was that the program of having the Supreme Court make determinations of whether to allow an exception to ER 5.4 on a case-by-case process could lead to persons who did not get their applications approved to allege preferential treatment by the Court. It also creates an avenue to allow people to write their own rules in a way where there would not be the same vetting of the rules that currently exists. That member suggested there be a careful consideration and public comment period of the proposal before it was adopted, if the proposal continued to be pursued by the task force and ultimately by the Supreme Court. Those concerns and suggestions were noted and would be further explored by the workgroup at its next meeting.

Other discussion included questions about the efficacy of businesses writing their own regulations, who would be conducting the application review, the regulatory process and some matters related to the application that may require more detail if the task force continued to pursue this path.

### **III. OTHER BUSINESS**

#### **Call to the Public**

The meeting concluded with a call to the public. A number of public members representing legal document preparers provided statements to the task force. Task force members asked questions of these public members as well.

#### **Next Meeting:**

Thursday, April 25, 2019, at 9:00 a.m. in Room 345 A/B.

#### **Adjournment:**

The meeting adjourned at 2:56 p.m.

## TASK FORCE ON THE DELIVERY OF LEGAL SERVICES

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### DRAFT MINUTES

Thursday, April 25, 2019

Room 345 A/B, Arizona State Courts Building

1501 W. Washington Street

Phoenix, Arizona 85007

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**Present:** Justice Ann Timmer, Chair; Victoria Ames; Robyn Austin; Betsey Bayless; Justice Rebecca Berch (ret.); Don Bivens; Stacy Butler; Dave Byers; Diane Culin; Whitney Cunningham; Judge Maria Elena Cruz; Jeff Fine; Paul Friedman; Tami Johnson; Judge Joseph Kreamer; John Phelps, Judge Peter Swann; Billie Tarascio; Guy Testini (telephonic); Mark Wilson

**Absent:** Peter Akmajian

**AOC Staff:** Jennifer Albright; Kathy Sekardi

**Guests:** Patricia Norris, ASU School of Law (telephonic); Patricia Sallen, Attorney at Law; Lynda Shely, Attorney at Law

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### I. REGULAR BUSINESS

The fourth meeting of the Task Force on the Delivery of Legal Services was called to order at 9:03 a.m. Justice Timmer, Chair, welcomed the membership, and others in the room.

The meeting minutes from March 14, 2019, were provided to members in advance. Justice Timmer asked if there were any edits. Having noted edits to attendance and a few grammatical changes, and edits having been made, Mr. Byers moved to approve the minutes. Mr. Fine seconded the motion. The minutes were approved unanimously.

### II. PRESENTATIONS

#### Judge Patricia Norris (ret.) & Judge Maria Elena Cruz, Proposal to Amended Rule 38, Arizona Rules of Supreme Court

Judge Norris explained that she had presented to the Cruz Workgroup on behalf of herself, Sheila Polk, Yavapai County Attorney, and Attorney Sharon M. Flack a proposal to amend Rule 38(d) of Arizona Rules of Supreme Court which provides special exceptions to the standard examinations and admissions process. Specifically, the proposal was to extend to law students post-law school graduation, the same supervised instruction and training in the practice of law for a limited time that law students are allowed.

Judge Norris explained there were two (2) versions of the proposed rule change presented in the task force's meeting materials with the only difference being that Version B removes the current Rule 38(d) signature requirement for supervising attorneys, and instead allows the certified law graduate to sign pleadings under a provision that explicitly makes supervising attorneys

responsible for all documents filed in any court, or with an administrative tribunal, by the law graduate. This removal of signature requirement would only apply to limited jurisdiction court practice. Judge Norris explained that Sheila Polk provided a letter of support, shared in the meeting materials, explaining that this change in the signature requirement for limited jurisdiction court practice only was related to the volume and speed that matters process through those courts.

The changes proposed would establish the “limited practice graduate category,” set eligibility criteria, application requirements, permitted activities, scope of representation, require notice to and consent of clients, list duties of supervising attorneys, duration the certification would last for and the events that would terminate the certification. Judge Norris shared that 19 other states have similar post-law school graduate certifications.

Members discussed the proposal. Questions asked included questions about the termination of the certification. This involved discussion of current practices of the Certification and Licensing Division of the Administrative Office of Courts (AOC) and the time it takes for an application for admission to the bar to be processed. The discussion also included the percentage of complete applications that resulted in admission to the bar generally, and the length of time the process took. Member, Mark Wilson, representing Certification and Licensing shared that a person has 5 years from the time they take the bar examination to seek and gain admission to the Bar. Judge Cruz and Pat Norris shared that both proposals terminated the certification in relation to the taking of the bar examination, thus limiting the time a certified graduate would be able to engage in this type of limited practice.

Having heard comments, and support for Version B, the workgroup agreed to take the proposal to their breakout session later in the meeting and review for edits that would reflect comments and concerns shared by the task force.

#### Judge Cruz, Proposals related to Ethical Rule 5.4 and Alternative Business Structures.

Judge Cruz then presented the three different options in relation to whether ethical rules should be amended to allow for co-ownership of legal practices by lawyers and non-lawyers. Judge Cruz reviewed Ethical Rule 5.4 (ER 5.4) with the task force, noting which comments to the rule addressed the primary purpose of the rule. She explained the chief purpose of ER 5.4 was client protection and preservation of the independent professional judgment of lawyers.

Judge Cruz explained Option 1 provided for amendment ER 5.4 to remove the explicit prohibition of lawyers and non-lawyers forming legal practice entities. The goal of Option 1 was to amend ER 5.4 to allow business formation possibilities that were broader than seen in Washington D.C.’s ER 5.4, which is the only other jurisdiction in the country to have a rule that removes some of the barriers to lawyers and non-lawyers forming business entities that involve the delivery of legal services. A draft of an amendment to ER 5.4 was provided to members in the meeting, demonstrating amendments that would allow for passive investment, disclosure to clients of being an alternative business structure (ABS), a registration requirement with the State Bar as an ABS, metrics to measure impact of amendments, and addressing the regulation of non-lawyer partners.

Discussion followed. A member asked about how non-lawyer partners in an ABS entity could be regulated by the State Bar considering the Bar regulates persons, not entities, and regulates the practice of law, not the provision of legal services. Discussion included the merits of and a proposal to recommend a shift to entity regulation by the State Bar and a shift to regulate providing legal services, from the current structure of regulating lawyers and the practice of law.

Justice Timmer shared that Bloomberg Law had recently written an article about states considering these kinds of changes to law business ownership and concerns that the big four accounting firms would then own many law practices. This included discussion of conflicts of interest rules and possibility that large investors could own multiple law entities and result in a single investor being “owner of both sides in a particular legal matter.”

Judge Cruz then presented Option 2, being referred to as the “Lassiter approach.” This proposal was presented at the March meeting and involved an application process where proposals to form a legal business owned by lawyers and non-lawyers could be made to a board who would review on a case-by-case basis for a “waiver” of ER 5.4 prohibitions on fee-sharing and this type of business formation. Judge Cruz shared the workgroup’s consideration of comments in relation to this proposal from the task force at the March meeting. This approach was likened to an “innovation sandbox” where a controlled arena for piloting innovative law practice formations could occur and they could be assessed for benefit to public, practice of law, delivery of legal services and risks or harms to the basic goals of ER 5.4 before fully adopting amendments to ER 5.4. A member also shared that Utah was pursuing a model such as this option.

A concern raised in March that such a process may lead to accusations of favoring certain investors, persons, or types of business could be levied against the Court was reasserted at this meeting. It was discussed that a board formed to review applications and clearly and stringently identified criteria for application consideration may mitigate these concerns. It was also discussed whether this model would result in meaningful movement toward permanent change to open up legal business formations to include non-lawyers.

Judge Cruz then presented Option 3, dubbed the “Shely approach.” The proposal eliminates ER 5.4. It in turn requires amendment to or comments to other ERs that involve conflicts and lawyer independence. Examples included amendment to ER 1.2 to emphasize lawyer independence, address conflicts in the context of an ABS in ER 1.7, and amendments to other ERs to clarify that the delivery of legal services is what is being regulated and not regulation of lawyers. The list of amendments or comments to existing ERs included ERs 1.0, 1.6, 1.7, 1.8, 5.1, 5.4, and 5.7.

Discussion followed as to this option. Option 3 was the option most supported by the task force.

#### Judge Cruz, Report of event at Institute for Advancement of American Legal Profession (IAALS)

Judge Cruz, Justice Berch (ret.), and Whitney Cunningham shared with the task force the events and experiences during a two-day event at Institute for the Advancement of American Legal Profession (IAALS) in Denver, Colorado the previous week. Several states and national organizations were invited by IAALS to discuss the regulation of the practice of law and various efforts in the represented states to innovate and make regulatory changes.

#### Don Bivens, Presentation of workgroup progress on topic of formation of a limited license non-lawyer tier of legal service providers.

Mr. Bivens shared that the workgroup had spent a great deal of time looking in-depth at subject matter areas within which non-lawyer, licensed legal service providers might practice. He reported that family law was the subject matter area that the workgroup had been able to draft the most detailed scope of practice recommendations for. The other areas for consideration were landlord/tenant, debt collection, limited jurisdiction civil matters, criminal matters in limited jurisdiction courts where no incarceration is possible, and a list of administrative law areas.

Mr. Bivens shared that the work group recommended that a limited license non-lawyer legal practitioner program be developed and went over a list of items that the workgroup agreed upon as to scope of practice and remaining open questions on scope of practice for family law. Mr. Bivens shared the workgroup recommendation will include that, as other states have done, there should be steering committees formed made up of lawyers working in each subject matter practice area, judges with experience in those areas, educators, examination drafters, ethics experts, and other legal stakeholders, to fully develop all nuances of: practice areas and scope of practice; academic and other educational requirements; and regulations and administration of licensing.

Discussion followed. Discussion included an ongoing debate as to the appropriateness of a tier of non-lawyer legal service providers that can give legal advice and appear in court. Members discussed that some of the practice areas, such as landlord/tenant and domestic violence/orders of protection may be better suited for a lay advocate or navigator program. The workgroup agreed that some practice areas may not, in and of themselves, be a viable economic model in light of clients' lack of resources. The workgroup agreed to develop draft recommendations for task force consideration.

Ms. Butler, member of the task force and the workgroup, related that a presentation on a DV Lay Advocate program would be made at the May meeting.

Mr. Bivens ended his presentation noting that the workgroup breakout session would include exploring the charge related to Arizona's Licensed Document Preparers (LDPs) and that several LDPs had been invited and were present to talk with the workgroup.

The task force broke for lunch and went into breakout sessions.

### **III. WORK GROUP BUSINESS**

#### **Work Group Breakouts**

Members of the public were able to attend breakout sessions.

The workgroup led by Don Bivens and Stacy Butler had invited several LPDs to speak about their work, their thoughts on changes to, clarification within, or expansions of the LDP program.

Judge Cruz's workgroup invited Patricia Sallen and Lynda Shely to continue to assist in the work related to ABS.

#### **Report Out**

The full task force reconvened at 2:05 p.m. to hear from the work groups.

First, Ms. Butler discussed the Bivens/Butler Workgroup breakout session. The workgroup heard from five different LDPs representing multiple areas of the state and multiple business models. Ms. Butler reported that the LDPs that were heard from did not generally seek expansion of their scope of practice, except in a few identified areas. These included a conflict in the rules governing LDPs that allowed them to assist with motions but prevented them for researching and citing the supporting rules of law, cases, etc.; ability to speak in court when directly addressed by a judge or requested or ordered by a judge; and more clarity on and ability to explain options (e.g., difference between guardianship under probate versus in family law). The LDPs who were present unanimously sought more access to continuing education courses in formats that allowed those in rural areas to effectively access those courses, more information about processes for seeking changes to the LDP Code and how to report issues with persons holding themselves out as LDPs,



but who are not licensed; and efforts by the judiciary to educate the public on what LDPs are, what they can do, and to connect LDPs with those most in need of their services.

Member Billie Tarascio then presented on behalf of the Cruz workgroup. Ms. Tarascio shared that the workgroup spend time reviewing Version B of the Rule 38 proposal discussed earlier in the meeting. Members worked on drafting edits. The workgroup reported it would have an edited version to present at the next task force meeting for consideration as part of the final recommendations of the task force.

Ms. Tarascio then shared that the workgroup returned to discussion of the three (3) ABS options, focusing on Option 3. A proposal complete with drafts of ERs affected by Option 3 would be presented at the May task force meeting. Discussion followed about including some kind of “Lassiter” approach or “innovation sandbox” approach in the recommendations as well. It was suggested perhaps both options could be pursued simultaneous as they did not necessarily seem exclusive of one another.

### **III. OTHER BUSINESS**

#### **Call to the Public**

The meeting concluded with a call to the public. Two members of the public spoke and answered questions by task force members.

#### **Next Meeting:**

Thursday, May 16, 2019, at 9:00 a.m. in Room 119 A/B.

#### **Adjournment:**

The meeting adjourned at 3:00 p.m.



## TASK FORCE ON THE DELIVERY OF LEGAL SERVICES

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### DRAFT MINUTES

Thursday, May 16, 2019

Room 119 A/B, Arizona State Courts Building

1501 W. Washington Street

Phoenix, Arizona 85007

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**Present:** Justice Ann Timmer, Chair; Peter Akmajian (telephonic); Robyn Austin; Betsey Bayless; Justice Rebecca Berch (ret.) (telephonic); Don Bivens; Stacy Butler; Diane Culin; Whitney Cunningham; Judge Maria Elena Cruz; Tami Johnson; Judge Joseph Kreamer; John Phelps; Judge Peter Swann; Billie Tarascio; Mark Wilson

**Absent:** Victoria Ames; Dave Byers; Jeff Fine; Paul Friedman; Guy Testini

**AOC Staff:** Jennifer Albright; Kathy Sekardi

**Guests:** Jeffrey Willis, President, Arizona State Bar

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### I. REGULAR BUSINESS

The fifth meeting of the Task Force on the Delivery of Legal Services was called to order at 9:02 a.m. Justice Timmer, Chair, welcomed the membership, and others in the room.

The meeting minutes from April 25, 2019, were provided to members in advance. Justice Timmer asked if there were any edits. No edits having been requested, Mr. Wilson moved to approve the minutes. Ms. Culin seconded the motion. The minutes were approved unanimously.

### II. PRESENTATIONS

Stacy Butler, Director, Innovation for Justice Program at UA Law and Jeffrey Willis, Arizona State Bar President. Presentation on a New Tier of Civil Legal Professional for Survivors of Domestic Violence developed by UA Innovation for Justice Program

Ms. Butler and Mr. Willis gave a presentation explaining what the Innovation for Justice Program is, and how students in the Innovating Legal Services course at the University of Arizona designed a one-year pilot program that would provide legal training to lay legal advocates at Emerge Center Against Domestic Abuse (“Emerge”). Emerge currently has seven lay legal advocates who assist domestic violence survivors (“participants”) in navigating civil legal processes. Ms. Butler explained that domestic violence survivors typically navigate the civil legal system without the assistance of counsel, or with limited advice and brief service from legal aid agencies. Currently, lay legal advocates can provide legal information to survivors, but cannot offer legal advice.

In the pilot program, lay legal advocates who complete training and an exam offered by the University of Arizona James E. Rogers College of Law would be licensed for a one-year period as “LLAs” (“Licensed Legal Advocates”), a new tier of civil legal service provider. As LLAs, they would be licensed to provide legal advice to Emerge participants in specific areas of law. The pilot would provide valuable information about whether a new tier of legal service can improve access to justice in the civil legal system. Ms. Butler provided an overview of the pilot program, including: (1) the scope of legal services that LLAs could provide; (2) how LLAs would be trained at University of Arizona Law; (3) how the LLAs would be certified, licensed and regulated by the State Bar of Arizona; (4) how the bench, bar, and public would receive education regarding the new LLA program; and (5) recommendations for evaluation of the pilot. Following Ms. Butler’s presentation, she presented a 30-minute video, which featured her students and provided a more in-depth explanation of the pilot program and its creation.

After several questions were answered about details of the pilot program, including an outline of the program’s timeline, several members suggested that the task force recommend that the pilot program be implemented. Additional topics were discussed, such as changes to the pilot if it were expanded or adopted as a permanent new tier of legal service provider. Discussion was had on whether the LLAs should be allowed to advocate in court. Ms. Butler reiterated that the pilot did not include representation in the traditional sense because current lay advocates had expressed repeatedly in the development of the program that such authority was not desired and that part of the process to help and empower survivors of domestic violence was to assist them in managing legal needs on their own. The task force membership was reminded that the full written report containing details beyond both the verbal and video presentation had been made available to them and was posted on the task force website as part of the meeting materials.

### **III. WORK GROUP BUSINESS**

#### Work Group Breakouts

After presentations, members broke into workgroups. Members of the public were able to attend breakout sessions.

#### Report Out

The full task force reconvened at 12:45 p.m. to hear from the workgroups.

First, Judge Cruz presented for her workgroup. She reported that work on a next version of the Rule 38 amendments was still ongoing. The workgroup hoped to have a final draft to present for the task force’s final consideration at the June meeting.

Judge Cruz shared that the workgroup spent most of the breakout session working on draft ethical rule amendments related to what is being called “Option 3” on the topic of how ethical rules might be amended to allow for alternative legal business structures (ABS). She reminded the task force that Option 3 involves elimination of ethical rule (ER) 5.4 and transferring content related to independence of lawyers and conflicts of interest that are currently in that rule into other

ethical rules. Significant discussion arose over lawyer responsibility for conduct of non-lawyer partners and whether there was a difference in that responsibility when a non-lawyer is an active partner in an ABS versus when passive investors are involved in the ABS. That discussion involved whether the ethics rules, the Supreme Court, and the State Bar had authority over non-lawyers and if the non-lawyers could consent to the jurisdiction of the Court and Bar or if Arizona needed to adopt an “entity regulation” approach versus the current structure of regulating persons only.

Discussion included whether a threshold of lawyer ownership should be required in an ABS to ensure lawyer independence. Specifically, the issue raised was whether lawyers should be required to be majority owners of any ABS. Members discussed several aspects of this issue, the chief concern being that by limiting investment by non-lawyers, the goal of removing the barrier of non-lawyers and lawyers partnering would be thwarted. Based on feedback and discussion the workgroup determined it would look into identifying persons in the business community as well as a representative from LegalZoom to discuss some of the questions raised by the membership.

Next Don Bivens presented on behalf of the Bivens/Butler workgroup. First, Mr. Bivens shared that the workgroup further discussed the pilot project created by the UA class that was presented earlier in the meeting. The workgroup planned to request that the task force recommend the Supreme Court pursue the pilot project. To that end the workgroup would bring to the June meeting an updated Administrative Order (AO) (referring to the draft AO in the final report shared by Ms. Butler and Mr. Willis) and would assist in determining if there were possible funding sources to such as grants that might support the pilot program.

Mr. Bivens also shared that the workgroup was going to speak with members of charitable and non-profit organizations that provide legal services to determine what if any value a licensed non-lawyer practitioner might bring to other types of agencies.

Mr. Bivens shared that the workgroup had also determined that a recommendation for expansion of “court navigator” programs like those in Coconino, Santa Cruz, and Maricopa counties would be a part of their overall recommendations. Discussion was had on the variety of “navigator” programs nationwide and the workgroup indicated it would further explore the concept of court employee positions that could assist those who did not have the benefit of legal representation.

Mr. Bivens then shared that the workgroup planned to make specific recommendations on improvements, but not substantial changes, to the Legal Document Preparer (LDP) program. Members from the Cruz workgroup asked that the Bivens/Butler workgroup specifically consider whether barriers to lawyers and LDPs working together, which are currently part of the rules governing the LDP program, could be relaxed or eliminated.

Finally, Mr. Bivens shared that they had reviewed a draft of a restyled Rule 38 prepared by John Rogers of the Supreme Court staff attorney’s office and Mark Meltzer of the Administrative

Office of Courts. Mr. Bivens stated that the workgroup sought additional edits to further clarify and reduce redundancy in Rule 38. The workgroup planned to review a next draft during the June task force meeting breakout and then provide further updates to the task force as that work progressed.

### **III. OTHER BUSINESS**

#### **Call to the Public**

The meeting concluded with a call to the public. One member of the public spoke and answered questions by task force members. As a result of the public comment, Judge Cruz suggested the Task Force should consider, with the assistance of the Arizona State Bar, a survey of Arizona solo practitioners. The objective would be to: 1) provide them information regarding the potential for ABSs in Arizona, 2) determine their level of interest in partnering with non-lawyers, and 3) assess whether solo practitioners anticipate this opportunity could enhance their ability to expand their practice, drive legal costs down and thereby serve a greater number of clients.

Justice Timmer asked the workgroups to begin drafting their portions of the final report to the Supreme Court. She asked for drafts beginning as soon as possible but at least by July, as the report must be finalized by October 1.

#### **Next Meeting:**

Thursday, June 13, 2019, at 9:00 a.m. in Room 119 A/B.

#### **Adjournment:**

The meeting adjourned at 2:07 p.m.

## TASK FORCE ON THE DELIVERY OF LEGAL SERVICES

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### DRAFT MINUTES

Thursday, June 13, 2019

Room 345 A/B, Arizona State Courts Building

1501 W. Washington Street

Phoenix, Arizona 85007

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**Present:** Justice Ann Timmer; Chair; Victoria Ames; Robyn Austin; Betsey Bayless; Dave Byers; Whitney Cunningham; Judge Maria Elena Cruz; Tami Johnson; Judge Joseph Kreamer; John Phelps; Billie Tarascio (telephonic); Guy Testini; Mark Wilson

**Absent:** Peter Akmajian; Justice Rebecca Berch (ret.); Don Bivens; Stacy Butler; Diane Culin; Judge Peter Swann

**AOC Staff:** Jennifer Albright; Kathy Sekardi

**Guests:** Sharon Flack; Patricia Sallen; Lynda Shely; Mark Meltzer; John Rogers

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### I. REGULAR BUSINESS

The sixth meeting of the Task Force on the Delivery of Legal Services was called to order at 9:09 a.m. Justice Timmer, Chair, welcomed the membership, and others in the room.

The meeting minutes from May 16, 2019, were provided to members in advance. Justice Timmer asked if there were any edits. No edits having been requested, Dave Byers moved to approve the minutes. Judge Joe Kreamer seconded the motion. The minutes were approved unanimously.

### II. WORK GROUP BUSINESS

#### Work Group Breakouts

After approval of minutes, members broke into workgroups. Members of the public were able to attend breakout sessions.

#### Report Out

The full task force reconvened at 12:30 p.m. to hear from the workgroups.

First, discussion on edits to a re-styled Rule 31 of the Arizona Rules of Supreme Court was had. John Rogers and Mark Meltzer, who have been assisting the Bivens/Butler workgroup on this task, provided an overview of edits made thus far to the Rule. Members had been provided a copy of edits to the rule prior to the meeting. A copy of the version of the rule after edits made during the breakout session was also provided to members.

John Rogers shared that re-styled Rule 31.3(c) now has one definition of legal entity and that the previous 7 exceptions related to legal entities were combined into 1 subsection. John also explained that a reference to boards was added to the subsection. Member Dave Byers pointed out that re-styled 31.3(d)(5) related to CPAs and tax related matters. Mr. Byers thought that certain of the listed agencies did not have tax-related matters. Justice Timmer pointed out that the task was to re-style the existing rule and discussion was had whether the re-styling made substantive changes or merely re-styled the rule. Discussion continued as to whether there are tax-related matters before Arizona Department of Transportation, Department of Economic Security, and Department of Child Safety. Justice Timmer pointed out the edit may make a substantive change, narrowing the rule, which would likely would allow the rule to be read as originally intended. It was noted any change that may be substantive should be noted in a final report and proposed rule petition.

Lynda Shely asked where the existing Rule 31(a)(2)(E) definition of unprofessional conduct was moved to as that rule is needed for Rule 41. John Rogers shared the definition was taken out because the term is not used in Rule 31. Discussion followed on where that phrase was used, noting predominately in the lawyer's oath and in Rule 41(g). It was agreed the definition needed to be moved and the oath and creed that were included in an editor's note to the current Rule 31 should also be moved into an appropriately related rule. Rule 42 was discussed as a possible place for these edits to occur. It was also noted Rule 54(i) references Rule 31(a)(2)(E). It was agreed the definition had to be moved somewhere and then changes to Rule 54(i) are needed. Justice Timmer indicated Rule 41 contains the oath. She suggested subsection (e) may be a good place for the definition. Or maybe 46(f) with the other definitions related to discipline there.

John Rogers pointed out that Rule 31.3(c)(6) which gives judges, hearing officers, or other presiding officer power to revoke authority to proceed pro per makes this authority universal. The authority was included in some of the previous exceptions in existing Rule 31(d), and this edit in the re-styled rule made the authority consistently applicable across the rule.

Patricia Sallen noted that the definition of legal assistant and paralegal were also removed and instead there is a reference of non-lawyer assistant in the re-styled rule. Joh Rogers noted that definition was removed because the term was not used in Rule 31. He explained that the related ethical rule uses the term "non-lawyer assistant" and that term is appropriately defined in the ethical rule.

It was determined that the re-styled Rule 31 would be put to vote at the next meeting giving members additional time to review the current draft. It was agreed the final report of the task force should note the need to add definition of unprofessional conduct into an appropriate rule as well as the need to include the oath and creed in an appropriate rule.

Judge Cruz presented for her workgroup. Judge Crux first reviewed a new version of Rule 38, Rules of Supreme Court. She noted at the last meeting it was asked if there was a way resolve some questions about the requirement for recent law graduates practicing in limited jurisdiction



courts be allowed to sign documents without the supervising attorney present in the courtroom. That edit was reviewed with the task force.

Judge Cruz shared that the workgroup voted to approve this version, noting that a change would still be made to subsection (f) which addresses substitution of the supervising attorney. Judge Cruz stated the proposed edit is a bit larger than it needs to be. She suggested that the section be edited to read more simply. After discussion simplified language was agreed upon.

Member Dave Byers brought up the question of whether there would be a specific attorney or just the county attorney generally that would be named, for example, as supervising attorney. Judge Cruz indicated that a specific attorney would be identified. Victoria Ames related that currently a specific attorney signs their name and includes their bar number on the Rule 38 form and that requirement does not change for the edited rule. It was suggested there be a definition of “supervision” and that the rule include a specified minimum length of time a supervising lawyer must be in practice in order to act as a supervising attorney.

Mr. Byers also asked what happens if a person does not pass the bar. Judge Cruz related they immediately lose the ability to continue practicing under the rule. It was also pointed out the revocation is self-executing. A follow-up question was asked about what happens if a person holding a Rule 38 post-graduation certificate passes the bar examination but do not pass character and fitness. Member Mark Wilson shared that failure to pass character and fitness results in denial of admission to the bar. Members reviewed several specific sections to clarify answers to these questions.

There was a request by Dave Byers that there be language that prohibits applicants from having a felony conviction as a prerequisite to obtaining a post-graduation Rule 38 certification. Members agreed such a provision should be added.

It was agreed that the changes discussed would be considered by the workgroup and the final draft would be presented at the July meeting for a vote.

Judge Cruz then discussed proposals related to the topic of Alternative Business Structures (ABS) for law firms. Judge Cruz started by reminding the group there were originally three proposals. The first was to edit Ethical Rule (ER) 5.4 to allow for some types of ABS. This approach proved to be difficult because it was not possible to foresee all the types of ABS law firms might develop into and adequately make edits to ER 5.4 to account for the unforeseen. The second proposal was dubbed the “Lassiter” approach. At prior meetings it was determined that focus would be on the third proposal to delete ER 5.4 and any provisions in ER 5.4 related to conflicts of interest and lawyer independence would be moved to or bolstered in other ERs that already address those topics.

Judge Cruz related that a conference call with Chas Rampenthal of LegalZoom, Justice Timmer, Judge Cruz, and John Phelps was held. LegalZoom has expanded operations to the United Kingdom, who allows ABS. Mr. Rampenthal shared how entity formation works in the UK. The discussion allowed for understanding of the level of passive investment that would be needed for investors to commit to investing in or being partners in a law firm. It was also shared that there is a specific entity regulation arm of the UK Lawyer governing body for law firms that operate as an ABS entity. This information supported the workgroups focus on deleting ER 5.4 as the approach that would allow for the concept of ABS to be most beneficial to Arizona.

Therefore, the focus of the discussion during the report out was the deletion of ER 5.4. A review of the latest draft of edited ERs to accomplish that task was given by Judge Cruz. Whitney Cunningham shared that the workgroup had focused on the rules themselves and not the comments to rules. Justice Timmer reminded the task force that the Court preferred that the rules reflect necessary content and that where possible comments be avoided. The workgroup committed to working to ensure that the rules had the important content and to minimize comments.

Judge Cruz shared that the workgroup also determined that deleting ER 5.4 would trigger a need for amendment to the ERs that covered advertising. Those were briefly discussed, and drafts of those edits would accompany the next draft of the proposal brought to the full task force. In addition, it was discussed that the final report should include a recommendation that there be a shift to entity regulation to aid in the implementation of the proposal of deleting ER 5.4. There was consensus that some sort of firm registration or entity regulation be a part of any proposal.

After review of the substantive edits in the current draft, members discussed the proposal. After discussion and agreement on additional edits to make or items to consider for further editing, there was consensus that the workgroup should continue to focus on this third proposal of deleting ER 5.4 and that the other 2 proposals would not be pursued at this time. It was agreed the workgroup would submit a final draft of the proposed edits to ERs to the July meeting for vote.

Due to absence of Don Bivens and Stacy Butler, leads of the Bivens/Butler workgroup, AOC staff, Jennifer Albright, reported out for that workgroup. Jennifer shared that the workgroup reviewed the proposal involving a tier of non-lawyer legal service providers, referred to colloquially as the “new tier” until a name for the group was decided upon. Jennifer noted a few edits were agreed upon and that the workgroup would bring a final draft proposal to the July meeting. It was noted that some surveying had been conducted to narrow a list of names for this non-lawyer legal practitioner position.

Jennifer shared the workgroup would also be bringing forward a draft proposal that embodied the University of Arizona Domestic Violence Licensed Lay Advocate pilot program that was presented in the May meeting. Jennifer noted the task force has overwhelming support for the proposal at the May meeting.

Jennifer then shared with the task force that the workgroup discussed the various court navigator programs around the state. Both the Maricopa County AmeriCorps and the Santa Cruz County Court Coordinator programs were discussed as examples during the workgroup’s breakout session. It was noted that the entire membership had received a link to a report on navigator programs written by the Justice Lab at Georgetown Law, and that report provided support for courts developing navigator programs. Jennifer shared that the workgroup proposed a recommendation for the final report that would encourage local courts to develop navigator-like job positions within the court. Jennifer noted that several members of the workgroup noted this would be the first time that there was a statement of direct support for local courts themselves to develop in-house positions that would be devoted to assisting self-represented persons in navigating court processes and procedures.

Jennifer shared that the workgroup would begin to focus on the charge related to the Legal Document Preparer (LDP) program at the July workgroup breakout session. The workgroup spent some time discussing Code sections governing the LDP program’s restriction on disbarred

attorneys from becoming LDPs, noting that there should not be an absolute bar to disbarred attorneys. It was noted that there is a process in the Code section that allows denial of certification of a disbarred attorney and an appeal process to allow those that feel they have special circumstances that demonstrate they have the character and fitness to act as an LDP to be assessed.

The workgroup also will be looking into changes that would allow for more meaningful methods to manage persons who hold themselves out as LDPs when they are in fact not certified through the Certification and Licensing Division of the AOC. The workgroup spoke with Patricia Sallen about potential options and will continue to pursue this line of discussion at the July meeting.

### **III. OTHER BUSINESS**

#### **Call to the Public**

The meeting concluded with a call to the public. Two members of the public spoke and answered questions by task force members.

Justice Timmer asked the workgroups to begin drafting their portions of the final report to the Supreme Court. She asked for workgroups to be prepared to present proposals for vote at the July meeting.

#### **Next Meeting:**

Thursday, July 11, 2019, at 9:00 a.m. in Room 119 A/B.

#### **Adjournment:**

The meeting adjourned at 3:04 p.m.